

## **MERCED SUPERIOR COURT LOCAL COURT RULES**

Management Form and the subjects listed in California Rule of Court, Rule 3.727.

(b). At the Case Management Conference, the Court will enter a Case Management Order setting a schedule for subsequent proceedings, and otherwise providing for management of the case as specified in California Rules of Court, Rule 3.728.

### **c. Assignment to One Judge for all or Limited Purposes; Complex Cases**

(1) In order to promote the efficient administration of justice, the presiding judge may on the court's own motion or on the noticed motion of a party, order the assignment of any case to one judge for all or limited purposes.

(2) A civil case which has been identified as complex, under California Rules of Court, Rule 3.400, shall be assigned to one judge for all purposes.

### **d. Telephone Appearances**

Appearances by telephone are permitted and encouraged under the circumstances and procedures listed in California Rules of Court, Rule 3.670. The telephone number to which calls can be made will be posted on the court's website and in the Notice of Inclusion in Delay Reduction Program/Notice of Case Management Conference.  
*(Effective July 1, 2004).*

## **RULE 5: RESERVED**

## **RULE 6: SETTLEMENT CONFERENCES**

### **a. Requirement of Settlement Conferences**

A settlement conference is required in all civil trial matters. The time, date and place of the mandatory settlement conference will be set at the Case Management Conference and included in the Case Management Conference Order. At the request of

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any party or on the court's own motion, the court may set a settlement conference in addition to the mandatory conference

### **b. Persons Attending**

Trial counsel, parties, and persons with full authority to settle the case must personally attend the conference, unless excused by the Court for good cause shown. If any consent to settle is required for any reason, the party with that authority must be personally present at the conference. The Court may impose sanctions in the event of an unexcused absence of principal or insurer.

Experience has demonstrated the importance and necessity of the presence of all persons whose consent will be required for binding settlement agreement. Therefore, only extraordinary circumstances will excuse the non-appearance at the conference of the principals and authorized representative of the insurer.

### **c. Each Party to be Prepared**

At the conference each plaintiff or party seeking affirmative relief or recovery shall be prepared to make his or her minimum request, and each defendant shall be prepared to make his or her highest offer.

In each case counsel who attend the conference shall be thoroughly familiar with the case and shall be prepared to discuss it.

### **d. Settlement Statement**

It is mandatory that all parties or counsel shall, at least five (5) court days prior to the scheduled hearing, file with the Clerk of the Superior Court and serve on each party, a mandatory settlement conference statement containing the following:

- (1) The names of all parties, including intervenors and their representatives;

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- (2) A detailed discussion of all facts and law pertinent to the issues of liability and damages involved in the case;
- (3) A good faith settlement demand and an itemization of economic and non-economic damages by each plaintiff;
- (4) A good faith offer of settlement by each defendant.

### **e. Participation in Good Faith**

For a meaningful conference, all attorneys and/or the parties must agree to participate in good faith. Any failure of an attorney to prepare for, appear at, and participate in a settlement conference, unless good cause is shown for any such failure, may be considered as an unlawful interference with the proceedings of the Court.

### **f. Failure to Appear**

If at the time of the scheduled settlement conference, plaintiff or those parties seeking affirmative relief fail to appear, the Court may order the trial date vacated and/or impose monetary sanctions. Written notice thereof will be mailed to all parties or their counsel of record as ordered by the Court. If the defendant or other responsible party fails to appear at the settlement conference and good cause is not shown, the Court may impose sanctions by way of costs, actual expenses, and counsel fees and order the case to proceed to trial on the date assigned.

### **g. Failure of Settlement Conference**

In the event settlement negotiations are not successful, counsel should expect and be prepared to proceed to trial on the date scheduled. Every effort will be made by the Court to insure that the case goes to trial on the date scheduled.

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### **h. Notice of Settlement or Dismissal**

If a case is settled or otherwise disposed of, the plaintiff must immediately file written notice of the settlement or other disposition with the court and serve the notice on any arbitrator or other court-connected ADR neutral involved in the case. If a hearing, conference or trial is imminent oral notice must be given to all of the above. The Court will impose sanctions for failure to provide it with timely notice of settlement.

A request for dismissal must be filed by Plaintiff within 45 days after the date of settlement unless the settlement agreement conditions dismissal on the satisfactory completion of terms that are not to be performed within 45 days of the settlement. If the settlement contains such terms, then the settlement must specify the date by which the dismissal is to be filed.

If plaintiff does not file a request for dismissal within 45 days after settlement or 45 days after the date set for dismissal, the court will either: 1) dismiss the case; or 2) Require Plaintiff or Plaintiff's counsel to appear and show cause why sanctions should not be ordered for failure to file the required request for dismissal.

*(Effective July 1, 2004).*

### **RULE 7: NOTICE OF STAY**

Any party who requests a stay must immediately file a notice of the stay and attach a copy of the order or document showing that the proceedings are stayed. If the person who requests the stay has not appeared or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of the stay and attach a copy of the order or other document showing the proceedings are stayed. This section applies to cases stayed for the following reasons:

- (a). Order of a Federal Court or higher State Court;

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- (b). Contractual arbitration under section 1281.4 of the Code of Civil Procedure;
- (c). Arbitration of attorney fees and costs under section 6201 of the Business and Professions Code; or
- (d). Automatic stay caused by a filing in another court.

*(Effective July 1, 2004).*

### **RULE 8: PRE-TRIAL CONFERENCES**

#### **a. Pre-Trial Settings**

Except in cases assigned to one judge for all purposes, pre-trial conferences WILL NOT be set unless a party, at the Case Management Conference, files a declaration setting forth facts indicating that a pre-trial conference is justified and the designated court official so finds and orders.

#### **b. Pre-Trial Conference Procedure**

(1). The parties shall confer before the date assigned for a pretrial conference to reach agreement upon as many matters as possible and shall prepare jointly, or each shall prepare, and submit before the conference, a written statement of the matters agreed upon.

(2). The parties shall be prepared to respond to any inquiry by the designated court official as to the possibility of a settlement of the case.

*(Effective July 1, 2004).*

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## **RULE 8.1: PREPARATION OF ORDER AFTER HEARING**

Unless the court orders otherwise or prepares the order after hearing on its own, the prevailing parties shall prepare a written order following any hearing on the Law and Motion calendar.

If the prevailing party does not prepare an order after hearing within 10 days of the hearing and does not communicate the reason for the delay to the other party, then the other party may prepare the order and process it.

*(Effective July 1, 2004).*

## **RULE 9: JURY TRIALS (Civil)**

### **a. Deposit, Forfeiture & Return of Jury Fees**

The deposit of advance jury fees, and of daily fees and mileage, shall be made as required by California Code of Civil Procedure section 631. The clerk shall not accept a deposit sought to be made fewer than 25 days before the date set for trial (5 days in unlawful detainer cases). If a balance of monies remains after trial or disposition, that amount shall be returned to the depositing party. If the monies on deposit are not sufficient to cover the daily costs of trial jurors, the Court shall notify the depositing party that there is a balance due and owing, and the party shall deposit that amount forthwith with the Court.

### **b. Failure to Post**

Failure to deposit advance or daily fees as required will be deemed a waiver of trial by jury and the Court, in its discretion, may proceed to trial without a jury, dismiss an empanelled jury, or upon such terms as may be just, proceed with a jury.

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### **c. Payment for Food, Lodging and Other Expenses**

In a civil action in which a jury has been sworn, the expenses for food, lodging and other reasonable necessities which are incurred shall be borne by the depositing parties. Before any such expenses are incurred, the Court Clerk at the trial shall require the depositing parties to advance such sums of money as the Court deems reasonably necessary in order to pay for the anticipated expenses, but in no event less than \$125.00 per panel meal. The money so advanced shall be deposited with the daily jury fees on the last day of the trial prior to the deliberation by the jury. Any surplus amount of money remaining after said expenses have been paid in full shall be returned to the payor. If a depositing party fails, upon the request of the Court, to advance such necessary expense money, the Court, will forthwith consider whether to dismiss the jury and proceed as if no jury had been selected and sworn.

### **d. No Jury Trials Scheduled for Certain Holiday Weeks**

No jury trials will be scheduled for the week in which the Thanksgiving holiday falls. In any year in which the Christmas holiday falls on a Tuesday, Wednesday, or Thursday, no jury trials will be scheduled for that week.

### **e. In Limine Motions**

(1). The following motions In Limine are deemed granted. Written motions should not be submitted on these issues:

- (a). Motion excluding evidence of collateral source;
- (b). Motion excluding evidence of, or mention of, insurance coverage;
- (c). (RESERVED).

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(d). Motion excluding offers to settle and/or settlement discussions.

(2). All other motions in limine shall be filed and served on opposing counsel no later than 4:00 p.m., six (6) court days prior to the trial call date. Written opposition to in limine motions, if any, shall be filed and served on opposing counsel no later than 4:00 p.m., three (3) court days prior to the initial trial call date. Failure to submit written opposition to in limine motions will not preclude oral opposition to the motions at the time of trial.

(3). (RESERVED).

(4). Motions in limine shall be prepared in the form prescribed as follows: The title of each in limine motion shall identify the moving party and describe the nature of the motion, and shall be numbered sequentially, indicating the total number of in limine motions submitted by the moving party. Example: “Plaintiff JANE DOE’S Motion In Limine to Exclude the Testimony of Joe Expert [No. 1 of 6].” Written opposition to in limine motions, if any, shall identify both the party filing the opposition, and the specific motion which is being opposed by name of moving party and motion number. Example: “Defendant RICHARD ROE’S Opposition to Plaintiff JANE DOE’S Motion In Limine No. 1.” (*Effective July 1, 2004*).

### **RULE 10: JURY INSTRUCTIONS (Civil)**

#### **a. Use of Pre-Approved Instructions**

To the extent possible parties must use instructions promulgated or sponsored by the California Judicial Council.